

Calendar No. 11

111TH CONGRESS
1ST SESSION**S. 33**

To amend the Internal Revenue Code of 1986 with respect to the proper tax treatment of certain indebtedness discharged in 2009 or 2010, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 6, 2009

Mr. ENSIGN introduced the following bill; which was read the first time

JANUARY 7, 2009

Read the second time and placed on the calendar

A BILL

To amend the Internal Revenue Code of 1986 with respect to the proper tax treatment of certain indebtedness discharged in 2009 or 2010, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. PROPER TAX TREATMENT OF CERTAIN FINAN-**
4 **CIAL INDEBTEDNESS DISCHARGED IN 2009**
5 **OR 2010.**

6 (a) IN GENERAL.—Section 108(a)(1) of the Internal
7 Revenue Code of 1986 (relating to exclusion from gross

1 income) is amended by striking “or” at the end of sub-
 2 paragraph (D), by striking the period at the end of sub-
 3 paragraph (E) and inserting “, or” and by adding at the
 4 end the following new subparagraph:

5 “(F) the indebtedness discharged is appli-
 6 cable financial indebtedness which is discharged
 7 after December 31, 2008, and before January
 8 1, 2011.”.

9 (b) APPLICABLE FINANCIAL INDEBTEDNESS.—Sec-
 10 tion 108 of such Code is amended by adding at the end
 11 the following new subsection:

12 “(i) DEFINITIONS AND RULES RELATING TO APPLI-
 13 CABLE FINANCIAL INDEBTEDNESS.—For purposes of sub-
 14 section (a)(1)(F)—

15 “(1) APPLICABLE FINANCIAL INDEBTED-
 16 NESS.—The term ‘applicable financial indebtedness’
 17 means indebtedness—

18 “(A) which was originally issued by a cor-
 19 poration, or by a partnership engaged in a
 20 trade or business (other than a trade or busi-
 21 ness of trading in stocks or securities for the
 22 partnership’s own account), and

23 “(B) which is—

24 “(i) indebtedness originally issued or
 25 syndicated by a financial institution (as de-

1 fined in section 582(c)(2) without regard
 2 to subparagraph (C) thereof) or a deposi-
 3 tory institution holding company (as de-
 4 fined in section 3(w)(1) of the Federal De-
 5 posit Insurance Act (12 U.S.C.
 6 1813(w)(1)),

7 “(ii) indebtedness which—

8 “(I) constitutes a security within
 9 the meaning of the Securities Act of
 10 1933, and

11 “(II) was originally issued pursu-
 12 ant to a registration statement that
 13 was declared effective under such Act
 14 or pursuant to an exemption from, or
 15 in a transaction not subject to, the
 16 registration requirements of such Act,
 17 or

18 “(iii) indebtedness that is traded on
 19 an established market (within the meaning
 20 of section 1273(b)(3)).

21 “(2) APPLICABLE DISCHARGES.—Subsection
 22 (a)(1)(F) shall only apply to a discharge of applica-
 23 ble financial indebtedness if such discharge is by
 24 reason of—

1 “(A) the acquisition of the indebtedness by
2 the issuer of the indebtedness,

3 “(B) the acquisition of the indebtedness of
4 the issuer by a person related, or who becomes
5 related, to the issuer of the indebtedness from
6 a person who is not related to the issuer, or

7 “(C) the significant modification of the in-
8 debtedness (within the meaning of section
9 1001).

10 For purposes of subparagraph (B), the determina-
11 tion of whether a person is related to another person
12 shall be made in the same manner as under sub-
13 section (e)(4).”.

14 (c) COORDINATION OF EXCLUSIONS.—Section
15 108(a)(2) of such Code is amended—

16 (1) by striking “and (E)” in subparagraph (A)
17 and inserting “(E), and (F)”, and

18 (2) by adding at the end the following new sub-
19 paragraph:

20 “(D) FINANCIAL INDEBTEDNESS EXCLU-
21 SION TAKES PRECEDENCE OVER INSOLVENCY
22 EXCLUSION UNLESS ELECTED OTHERWISE.—
23 Paragraph (1)(B) shall not apply to a discharge
24 to which paragraph (1)(F) applies unless the

1 taxpayer elects to apply paragraph (1)(B) in
2 lieu of paragraph (1)(F).”.

3 (d) EARNINGS AND PROFITS.—Section 312(l) of such
4 Code is amended by adding at the end the following new
5 paragraph:

6 “(3) DISCHARGE OF CERTAIN FINANCIAL IN-
7 DEBTEDNESS.—The earnings and profits of a cor-
8 poration shall not include income from a discharge
9 of indebtedness to which section 108(a)(1)(F) ap-
10 plies.”.

11 (e) OTHER SPECIAL RULES.—

12 (1) TREATMENT AS MARKET DISCOUNT
13 BOND.—For purposes of the Internal Revenue Code
14 of 1986, any indebtedness acquired in a transaction
15 described in section 108(i)(2)(B) of such Code (as
16 added by subsection (b)), or received pursuant to an
17 exchange arising from a transaction described in sec-
18 tion 108(i)(2)(C) of such Code (as so added), shall
19 be treated as a market discount bond (within the
20 meaning of section 1278(a)(1) of such Code) having
21 market discount equal to the amount (if any) which,
22 but for section 108(a)(1)(F) of such Code (as added
23 by subsection (a)), would have been includible in
24 gross income by reason of the discharge of such in-
25 debtedness in any such transaction.

1 (2) ACQUISITIONS BY FOREIGN PERSONS.—Any
2 interest (or original issue discount) paid or accrued
3 after December 31, 2008, and before January 1,
4 2011, on indebtedness which is described in section
5 108(a)(1)(F) of such Code by reason of the acqui-
6 sition of such indebtedness by a foreign person or by
7 a partnership (or other pass-through entity) in
8 which a foreign person is a partner (or other profits
9 or capital owner) shall not be subject to sections
10 871(h)(3), 881(c)(3)(B) or 881(c)(3)(C) of such
11 Code.

Calendar No. 11

11TH CONGRESS
1ST Session
S. 33

A BILL

To amend the Internal Revenue Code of 1986 with respect to the proper tax treatment of certain indebtedness discharged in 2009 or 2010, and for other purposes.

JANUARY 7, 2009

Read the second time and placed on the calendar